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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,937	10/02/2001	Raymond R. Hannigan	VAC .482	8701

30159 7590 09/29/2003

ATTN: LEGAL-MANUFACTURING  
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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/29/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/937,937

Applicant(s)

Hannigan et al.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-27 is/are rejected.
- 7) ☐ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Action*.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendment filed on 3/20/03 has been received and made of record in the application file wrapper. Claim 7 has been amended and claims 11-27 have been added as requested.

### ***Information Disclosure Statement***

2. The listing of references in the search report is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office. Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Therefore, the examiner is requesting the references be cited on form PTO –1449 and submitted to the office in a proper information disclosure statement.

### ***Drawings***

3. The drawings are objected to because in Fig. 2, it appears as if reference characters "17" and "18" point to the same feature. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Objections***

4. Claims 1, 7, 12 and 18 are objected to because of the following informalities:

Claim 1, line 1, delete the first occurrence of --the--;

Claim 7, line 3, "said wound site" should read --the wound site--;

Claim 7, each occurrence of "said region" should read --the region--; and

Claim 18, lines 3, "said wound" should read --the wound--. Appropriate

correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claim 11-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 11, lines 7 and 8, "said porous pad" lacks proper antecedent basis.

Claim 12, line 4, the recitation "a drape for sealing enclosure of said pad" is indefinite in that the examiner is not clear as to what is being claimed.

Claim 18, lines 6 and 7, "said porous pad" lacks antecedent basis.

Claim 19, line 2, "said porous pad" lacks antecedent basis.

Claim 20, line 2, "said porous pad" lacks antecedent basis.

Claim 25, line 6, "said porous pad" lacks antecedent basis.

The remaining claims are necessarily rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

9. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No 5,149,331 ("Ferdman et al.").

As regards claim 1, Ferdman et al. disclose that in order to promote wound healing of flesh wounds in humans and animals, it is desirable to bring the severed surfaces of the wound into close contact with each other (col. 1, lines 8-11). Ferdman et al. also disclose that the principle object of the present invention is to provide an improved method for treatment of wounds.

Ferdman et al. further disclose the steps of applying a porous adhesive dressing (20) to a wound site, applying a vacuum to the dressing, and heating the dressing. The application of heat to the wound inherently effects a change in the inflammatory response at the region of the wound.

From these disclosures, the examiner contends that the improved treatment promotes wound healing.

As regards claims 2-4, the application of heat inherently accelerates the metabolic function at the wound site and encourages rapid capillary occlusion and

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accelerated initiation of the cleanup and rebuilding stages of the mammal's inflammatory response.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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13. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferdman et al. in view of U.S. Patent No. 4,382,441 ("Svedman").

As regards claims 5 and 6, Ferdman et al. fail to teach retarding the local metabolic function at a wound site to prevent over-activation of the inflammatory response by the step of cooling the region.

Svedman, however, discloses a method for treating tissue, which method comprises the step of heating or cooling the wound site for the purpose of effecting a change in the metabolic function at the wound site.

In view of Svedman, it would have been obvious to one having ordinary skill in the art to modify the method disclosed in Ferdman et al. by substituting the step of heating the region for the step of cooling the region in order to retard the metabolic function. Although Svedman does not explicitly state that the step of cooling the wound site retards the inflammatory response, it is inherent that the application of cool heat to a wound site retards the inflammatory response.

***Allowable Subject Matter***

14. Claims 7-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claim 11, 18 and 25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.


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16. Claims 12-17, 19-24, 26 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.



**Kim M. Lewis**  
**Primary Examiner**  
**Art Unit 3761**

kml  
September 20, 2003